



February 27, 2023

Joint Committee on Finance, Revenue and Bonding
Attn: Brie Wolf
Legislative Office Building
300 Capitol Avenue
Hartford, CT 06106

Re: H.B. 5673 - An Act Concerning the Reformation of Certain Taxes and Tax Equity (Oppose).

Dear Co-Chair Fonfara, Co-Chair Horn, and Members of the Joint Committee on Finance, Revenue and Bonding:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose H.B. 5673, An Act Concerning the Reformation of Certain Taxes and Tax Equity.

CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms¹. Proposed taxation on the revenues generated from digital advertising services therefore can have a significant impact on CCIA members. While recognizing that policymakers are appropriately interested in the digital services that make a growing contribution to the U.S. economy, these bills require study, as they may raise constitutional concerns and risk having broad economic impacts, including on small- and medium-sized local businesses.

The advertising industry is a diverse and dynamic space, and consumers today encounter advertisements when they read their local newspaper, tune into their favorite broadcast television or radio program, as well as when they use the internet. In each of these instances, a vendor unites viewers with advertisers seeking an audience by offering compelling content. CCIA cautions against singling out businesses offering digital advertising services, and policymakers should provide a rationale if print or broadcast services employing a similar business model would not also be captured in the proposed tax.

1. Definitions and requirements should be more clearly described.

As currently drafted, H.B. 5673 does not define “digital advertising services”, which is a very broad term and would need to be clearly defined. In addition, the current language reads as if the proposed ten percent tax applies to any business that generates annual gross revenues exceeding ten billion dollars from “digital

¹ For 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.ccianet.org/members>.



advertising services” even if those companies do not operate those services in Connecticut or even the United States, raising legal and enforceability questions. Furthermore, the bill’s language would create a tax on the entirety of a business’ annual gross revenues from “digital advertising services”, therefore placing a tax on revenue largely generated from services offered in jurisdictions outside of Connecticut, which raises further legal questions.

2. While the bill may appear to target and tax larger businesses, the impacts are likely to impact and harm smaller businesses instead.

If a significant tax is levied against businesses who conduct digital advertising services, these costs are likely to be passed on. And when these costs are passed on, they’re likely to be on to the entities creating the ads, which translates to the various smaller-sized local businesses who currently reap significant benefits in being able to advertise on such platforms.

When assembling an advertising campaign, businesses are looking for the most effective and efficient options – how to reach and influence their target audience with the least amount of resource commitment. Digital advertising dramatically reduces costs through automation, while also offering more customizable and targeted features². Online advertising is particularly beneficial to local businesses who can then target their advertising to the local markets that they are serving. For these reasons, digital advertising is an increasingly popular option for smaller and local businesses – in fact, one study showed that small businesses saw savings of nearly \$163 billion, annually, by using online advertising³. Therefore, by levying fees on digital services hosting such advertisements, this would impede the ability of small and local businesses to effectively and efficiently advertise to targeted consumers.

3. Similar proposals to tax digital advertising in other states have raised serious constitutional questions.

This legislation singles out businesses who provide digital advertising services from their peers in the traditional offline advertising space. This is important as it raises constitutional concerns related to the Internet Tax Freedom Act (ITFA) and the First Amendment.

In 2021, Maryland enacted the “Digital Advertising Gross Revenues Tax”, first-in-the nation legislation to impose a tax on digital advertisements. Since its enactment, the law has been challenged at both the state and federal levels. As such, the state may face a budget shortfall of approximately \$250 million as the law’s

² Kay Jebelli. *Evolution of Ad Spend and the Dynamics of Digital*. Disruptive Competition Project, (Dec. 4, 2020), <https://www.project-disco.org/competition/050420-evolution-of-ad-spend-and-the-dynamics-of-digital/#.Y3es53bMI2U>.

³ *Online Advertising Delivers Big Benefits for Small Businesses*. Small Business & Entrepreneurship Council, (Sept. 10, 2019), <https://sbecouncil.org/2019/09/10/online-advertising-delivers-big-benefits-for-small-businesses/>.



constitutionality is considered in the courts⁴. In October 2022, a Maryland state court⁵ struck down the law citing several instances in which it is unconstitutional. First, the court ruled that the law violates the ITFA by imposing a discriminatory tax on online advertising services, but not traditional offline advertisements. In addition, the court found that the law violates the First Amendment because it disproportionately impacts free speech by exempting more traditional means of advertising such as broadcast and news media but applies the tax to comparable internet speech.

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We appreciate the Joint Committee's consideration of these comments and stand ready to provide additional information as the Legislature considers proposals related to technology policy.

Sincerely,

Khara Boender
State Policy Director
Computer & Communications Industry Association

⁴ Brian Witte, *Maryland Judge Strikes Down Nation's First Digital Ad Tax*. Associated Press, 17 Oct. 2022, <https://ktla.com/ap-business/ap-maryland-judge-strikes-down-nations-first-digital-ad-tax/>.

⁵ Comcast v. Comptroller of Maryland, No. C-02-CV-21-000509 (Md. Cir. Ct. 2022)